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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/622,878	07/18/2003	Quinn L. Cummings	5612P001C	2762

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EXAMINER
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LARSON, JUSTIN MATTHEW

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 07/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/622,878

Applicant(s)

CUMMINGS ET AL.

Examiner

Justin M. Larson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 7/18/03.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 7/18/03 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>9/26/03</u>   | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Information Disclosure Statement***

1. The information disclosure statement filed 9/26/03 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each cited foreign patent document; each non-patent literature publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. More specifically, no copy of "Carry On!" from Parenting Magazine was provided. It has been placed in the application file, but the "Carry On!" article referred to therein has not been considered.

### ***Drawings***

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "loop" in claims 9 and 13 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering

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of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Specification***

3. The following guidelines illustrate the preferred layout for the specification of a utility application. These guidelines are suggested for the applicant's use.

#### **Arrangement of the Specification**

As provided in 37 CFR 1.77(b), the specification of a utility application should include the following sections in order. Each of the lettered items should appear in upper case, without underlining or bold type, as a section heading. If no text follows the section heading, the phrase "Not Applicable" should follow the section heading:

- (a) TITLE OF THE INVENTION.
- (b) CROSS-REFERENCE TO RELATED APPLICATIONS.
- (c) STATEMENT REGARDING FEDERALLY SPONSORED RESEARCH OR DEVELOPMENT.
- (d) THE NAMES OF THE PARTIES TO A JOINT RESEARCH AGREEMENT
- (e) INCORPORATION-BY-REFERENCE OF MATERIAL SUBMITTED ON A COMPACT DISC (See 37 CFR 1.52(e)(5) and MPEP 608.05. Computer program listings (37 CFR 1.96(c)), "Sequence Listings" (37 CFR 1.821(c)), and tables having more than 50 pages of text are permitted to be submitted on compact discs.) or  
REFERENCE TO A "MICROFICHE APPENDIX" (See MPEP § 608.05(a). "Microfiche Appendices" were accepted by the Office until March 1, 2001.)
- (f) BACKGROUND OF THE INVENTION.
  - (1) Field of the Invention.
  - (2) Description of Related Art including information disclosed under 37 CFR 1.97 and 1.98.
- (g) BRIEF SUMMARY OF THE INVENTION.
- (h) BRIEF DESCRIPTION OF THE SEVERAL VIEWS OF THE DRAWING(S).
- (i) DETAILED DESCRIPTION OF THE INVENTION.
- (j) CLAIM OR CLAIMS (commencing on a separate sheet).
- (k) ABSTRACT OF THE DISCLOSURE (commencing on a separate sheet).

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- (I) SEQUENCE LISTING (See MPEP § 2424 and 37 CFR 1.821-1.825. A "Sequence Listing" is required on paper if the application discloses a nucleotide or amino acid sequence as defined in 37 CFR 1.821(a) and if the required "Sequence Listing" is not submitted as an electronic document on compact disc).

4. The disclosure is objected to because of the following informalities:

Titles/Headings are underlined.

Appropriate correction is required.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-7, 10-12, 14, 16, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wilmlink (D332,865) in view of Moore (4,434,920). Wilmlink discloses a baby carrying bag comprising a shoulder strap portion of two fabric panels sewn together (Figure 3), a holding portion, two stabilizing cords that are adjustable by varying the tension on a portion of either, a clasp for adjusting the shoulder strap where the adjustable portion is on the lower/inner side of the strap (Figure 1), and multiple apertures in the holding portion (Figure 2), but fails to show that the stabilizing cords are anchored to the shoulder strap. Moore teaches that it is known in the art to fasten or anchor one end of a stabilizing cord (D) to a surface (Figure 4, 46) lying adjacent the region of material (Figure 2, 32 or 34) subject to compression or bunching upon tightening the stabilizing cord. Without anchoring one end of the intended stabilizing

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cord, the entire cord would pull free when a user attempted to tighten the exposed end and it would not serve its intended purpose. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Wilmink by anchoring one end of the stabilizing cord so that it did indeed function as required to secure the bag.

7. Claims 8, 9, and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wilmink in view of Moore as applied to claims 1-7, 10-12, 14, 16, and 19 above, and further in view of Ashley (5,092,681). Wilmink in view of Moore discloses the claimed invention except for the specific material of the stabilizing cord and a loop disposed on the holding portion to guide the stabilizing cord. Ashley, however, teaches that a continuous guide channel formed by stitching an entire side of fabric back onto itself (Figure 5) can be replaced by a guide channel formed of disposed loops (Figure 6) and also that a rope or ribbon stability cord can be used in either of these guide channels (Col. 5, Lines 21 and 42). Therefore, It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Wilmink in view of Moore by using a channel formed by disposed loops to guide a stability cord of rope or ribbon along the appropriate regions of the holding portion.

8. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wilmink in view of Moore as applied to claims 1-7, 10-12, 14, 16, and 19 above, and further in view of Cook (5,118,201). Wilmink in view of Moore discloses the claimed invention except for grommets disposed within the apertures. Cook, however, teaches that a grommet (16) may be added to a hole through which a stability cord (12) passes in

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order to reinforce the hole (Col. 14, Line 45). Therefor, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Wilmink in view of Moore by placing grommets in the apertures in order to reinforce them and extend the life of the carrier that might otherwise be shortened due to wear on the apertures by the stability cord.

9. Claims 17 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wilmink in view of Moore as applied to claims 1-7, 10-12, 14, 16, and 19 above, and further in view of Belias (6,059,458). Wilmink in view of Moore discloses the claimed invention except for the modification where the intermediate section of the stability cord is anchored to a central region of the holding portion. Belias, however, teaches that stabilizing cords (24) can be attached at the center (38) of a guide channel (22) (Col. 4, Line 10) in such a way that they can be pulled to tighten the bag (Col. 3, Line 50). Therefor, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Wilmink in view of Moore by anchoring the stabilizing cords in the central region of the holding portion rather than to the shoulder straps in order to secure the bag.

### ***Double Patenting***

10. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double

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patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

11. Claims 1-19 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-13 of U.S. Patent No. 6,595,396. Although the conflicting claims are not identical, they are not patentably distinct from each other because they disclose the same invention using minor wording alterations without introducing any new structure or utility to the invention that would not have been obvious over the original patent.

#### ***Conclusion***

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Justin M. Larson whose telephone number is (571) 272-8649. The examiner can normally be reached on M-Th 6-4:30.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan J. Newhouse can be reached on (571)272-4544. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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NATHAN J. NEWHOUSE  
PRIMARY EXAMINER  
7/7/05

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